

ORIGINAL

Decision No. 28590

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

TEHACHAPI CATTLE COMPANY, a corporation,
MEDA E. HOUGHTON, as Administratrix of
the estate of R.E. Houghton, deceased,
and S.M. JASPER,

Complainants,

vs.

Case No. 2711.

KERN ISLAND CANAL COMPANY, a corporation,

Defendant.

In the Matter of the Investigation upon the
Commission's own motion into the operations,
service, practices, contracts, rules and
regulations of ANDERSON CANAL, INC., BUENA
VISTA CANAL, INC., CENTRAL CANAL COMPANY,
EAST SIDE CANAL COMPANY, THE FARMERS CANAL
COMPANY, GOOSE LAKE CANAL COMPANY, JAMES
CANAL, INC., JAMES & DIXON CANAL, INC., JOYCE
CANAL, INC., KERN ISLAND CANAL COMPANY, KERN
RIVER CANAL AND IRRIGATING COMPANY, LERDO
CANAL COMPANY, PIONEER CANAL, INC., PLUNKET
CANAL, INC., STINE CANAL, INC., KERN COUNTY
CANAL AND WATER COMPANY, KERN COUNTY LAND
COMPANY.

Case No. 2755.

Athearn, Chandler & Farmer and Frank R. Devlin,
by Milton T. Farmer, for S.M. Jasper.
Houghton & Houghton, by Edward T. Houghton, for
Tehachapi Cattle Company and the Estate of
R.E. Houghton, deceased.
McCutchen, Olney, Mannon & Greene, by John T. Pigott
and Carl I. Wheat, for Kern Island Canal Com-
pany and for Anderson Canal, Inc., Buena
Vista Canal, Inc., Central Canal Company, East
Side Canal Company, The Farmers Canal Company,
James Canal, Inc., James & Dixon Canal, Inc.,
Joyce Canal, Inc., Kern Island Canal Company,
Kern River Canal and Irrigating Company, Lerdo
Canal Company, Pioneer Canal, Inc., Plunket
Canal, Inc., Stine Canal, Inc., Kern County
Canal and Water Company, and Kern County Land
Company.

Thomas W. McManus, for himself as a water user
of the Stine Canal.
F.A. Chamberlain, for the Farmers Protective
Association, in his own behalf and for the
Arroyo and Emery Ditches.
C.S. Harkins, for the Castro interests.
George B. Preston, for the South Fork Water Users.
Alfred Siemon, for the East Side Water Users
Association.
Mrs. Bertha M. Rankin, for East Side Water Users
Association.
J.E. Roberts, for the Beardsley Canal Water Users.
Harris, Willey, Griffith & Harris, by Ronald B.
Harris, for the Farmers Protective Association
and for landowners taking water under the
Buena Vista Canal, Inc., The Farmers Canal
Company, Kern Island Canal Company, Kern River
Canal and Irrigating Company, Stine Canal, Inc.,
and Castro Canal.
Charles N. Sears, for consumers on the Arroyo Ditch.
Hugh S. Jewett, in propria persona.
J.J. Deuel and L.S. Wing, for California Farm Bureau
Federation.

CARR, Commissioner:

O P I N I O N

The complainants in Case No. 2711, consumers of Kern Island Canal Company, (1) complain of the utility, the gravamen of their charge being an undue and unauthorized extension of service area with a consequent diminution of water supply available for use upon complainants' lands. Their claim for relief is premised in large part upon the Company's failure to secure a certificate of public convenience and necessity authorizing extensions of its canal system and enlargement of the area served. The claim is also made that the water supply was originally dedicated to more

(1) Kern Island Canal Company is the successor of Kern Island Irrigating Canal Company which was incorporated in 1870 and the charter of which expired in 1920.

restricted districts than the territory now being served.

Case No. 2755, instituted by the Commission, besides embracing the issue of service area of Kern Island Canal Company, also brings in issue the respective service areas of other public utility canal companies in the Kern River delta.⁽²⁾

Other issues centering about the methods of delivering water were raised by the two cases, but these have been disposed of in interim orders heretofore issued. (34 C.R.C. 147; 36 C.R.C. 9.)

Public hearings have been held and the cases submitted on briefs, the last brief arriving on January 26, 1933.

There are here before the Commission all necessary parties to a determination of the claims presented respecting service areas, to-wit: the various utilities, Kern Island Canal Company, Buena Vista Canal, Inc., Central Canal Company, East Side Canal Company, The Farmers Canal Company, Kern River Canal and Irrigating Company, Pioneer Canal, Inc., and Stine Canal, Inc., as well as the Kern County Land Company, which, through the Kern County Canal and Water Company, controls the various utility canal companies and also owns the land which it is claimed was improperly brought under Kern Island service.⁽³⁾

(2) Of the canal companies named in the proceeding, Anderson Canal, Inc., Goose Lake Canal Company, James Canal, Inc., James & Dixon Canal, Inc., Joyce Canal, Inc., Plunket Canal, Inc., and Lerdo Canal Company are not public utilities, serving only lands of Kern County Land Company, the owner directly or indirectly of all of their stock.

(3) Kern County Land Company directly or indirectly owns all the stock of Kern County Canal and Water Company, which in turn owns 4,997 shares of the 5,000 total shares outstanding of East Side Canal Company; 2,497 shares of the total 2,500 shares outstanding of Buena Vista Canal, Inc.; 2,809 shares of the total 2,850 shares

Map "A" hereto annexed indicates generally the territory now under irrigation by the various utility and non-utility canals controlled by the Kern County Land Company.

Various phases of the operations of the series of water utilities serving the Kern River delta have been before the Commission and it is unnecessary to go over the ground covered in previous or concurrent decisions.⁽⁴⁾ It is appropriate to point out that the utility canal companies have been and are mere agencies and instrumentalities of Kern County Land Company, which has directed and controlled their activities as an incident to its extensive land and farming operations.⁽⁵⁾ The water right or entitlement of the Kern Island Canal Company is a first right

outstanding of Stine Canal, Inc.; 136½ shares of the total 144 shares outstanding of The Farmers Canal Company; 29,997 shares of the total 30,000 shares outstanding of Central Canal Company; 2,425 shares of the total 2,500 shares outstanding of Kern River Canal and Irrigating Company; 2,397 shares of the total 2,400 shares outstanding of Pioneer Canal, Inc.; 2,997 shares of the total 3,000 shares outstanding of Kern Island Canal Company. The Land Company owns none of the irrigated land under East Side Canal Company; 47 per cent of the irrigated land under Buena Vista Canal, Inc.; one per cent of the irrigated land under Stine Canal, Inc.; 20 per cent of the irrigated land under The Farmers Canal Company; 87 per cent of the irrigated land under Central Canal Company; 50 per cent of the irrigated land under Kern River Canal and Irrigating Company; 80 per cent of the irrigated land under Pioneer Canal, Inc.; and 44 per cent of the irrigated land under Kern Island Canal Company. In addition to the lands owned under the above utilities, the Land Company is also the owner of large and extensive tracts of land under its private canal companies.

(4) Hancock vs. East Side Canal Company, 16 C.R.C. 834; id 20 C.R.C. 205; Re Rates East Side Canal Co., et al., decided concurrently herewith.

(5) As illustrative, the Panhandle area comprising some 6,100 acres was taken under the Kern Island service about 1919. The main canal by which this territory was taken over was built by the Land Company itself. No contract, resolution or corporate action by the utility surrounded or recorded this important transaction, but it was apparently consummated through the informal direction of some employe or officer of the Land Company, owner of the land involved.

on the Kern River⁽⁶⁾ and it is highly advantageous for land to be under this system rather than under the systems of the other canal companies. There thus has been a powerful incentive for the Kern County Land Company to get its holdings so far as possible on the Kern Island system. Through its domination and control of

(6) The following is a list of water entitlements from the Kern River with their amounts and order of priority, some of which, it will be observed, run to interests other than the utility canal corporations controlled by the Kern County Land Company.

	<u>Diversion Right</u> <u>in Cu. Ft. Sec.</u>
Kern Island	300.
Miller & Lux	Miller & Lux receive 1/3 of flow measured at First Point, March 1 - August 31, after 300 cu. ft. sec. to Kern Island, de- livered at Second Point.
Castro	20.
O.S.F. Shaw Decree	10.50
Buena Vista	80.
James	120.
Anderson	20.
Stine	150.
Meacham	30.
Farmers	150.
Plunket	40.
Joyce	40.
Johnson	40.
Pioneer	130.
Beardsley	60.
Anderson	10.
James & Dixon	40.
Wilson	10.
McCaffrey	26.
Edwards	5.
McCord	100.
Calloway	850.
Railroad	200.
Buena Vista	90.
James	180.
Pioneer	170.
Beardsley	240.
Kern Island	56.

the canal companies, it has had the opportunity to shift and rearrange service areas. Thus, with incentive coupled with opportunity, the natural result followed and during the period 1893 to 1920 extensive holdings of the Land Company were brought under the Kern Island canals. While these utility canal corporations are mere instrumentalities of the Land Company, they are essential instrumentalities which have to be maintained because of separate water entitlements with which invested.

Before considering the status of these annexations, it is convenient to take up the matter of the service areas of the canal companies other than the Kern Island. These are involved in Case No. 2755 and the evidence bearing thereon was closed early in the course of the hearings.

I. Service Areas of Utilities Other Than Kern Island Canal Company.

At the initiation of the proceedings the various canal companies were requested to file a map or maps designating the exterior boundaries of the areas served and claimed by them to be within their service areas as well as land within such boundaries not receiving service. In response to this request, there was filed, as Exhibit No. 1, a large map giving the information requested. On said map, lands as to which the right to service has been released were marked "C", lands which have not been irrigated since 1915 and have developed an independent water supply were marked "B", and lands which had not received utility service since 1915 were marked "A". Because of the clearly established scantiness of the water supply of these utilities further extension of their primary service areas should be forbidden. (Water Companies Act, Chap. 80, Stats. 1913.) Furthermore, the "A", "B" and "C" lands, which have thus relinquished or by long non-use would appear to

have abandoned their right to service, should be excluded from the primary area. In a complicated and intricate situation such as here presented, it may well develop that minor errors have been made respecting such "A", "B" and "C" lands. The form of the Order will make it possible to remedy any injustice if such errors develop.⁽⁷⁾

II. Kern Island Canal Company Service Area.

Map "B" attached hereto indicates: (a) generally the location of the system of this company and the lands the annexation of which is drawn in question, (b) the boundaries of Swamp Land District No. 111, and (c) the boundaries of the area described in the Articles of Incorporation of the predecessor company as that which would be served. Map "C", also hereto annexed, shows the Kern Lake and Panhandle areas with the approximate location of early canals and the present system of canals serving the areas.

1. Swamp Land District No. 111 Contract.

Shortly after the incorporation of the predecessor company and on December 27, 1870, it entered into a contract with Swamp Land District No. 111, the lands of which District were included within the service area described in its Articles. This agreement by its terms gave to "owners of lands" in the District "a preference in the use of all waters passing through said canal, for irrigating and domestic purposes.* * *" Complainants in Case No. 2711 here seek to enforce this preference, claiming that

(7) Most of the "A" lands belong to the Land Company. There was some contention that certain other small tracts should be placed in the "A" category but the evidence on this was sharply conflicting.

the contract carved out and created a private right which still inheres in favor of landowners in the District. The effect of this contract was considered at length in Hancock vs. East Side Canal Co., 20 C.R.C. 205, where it was claimed that consumers under the East Side Canal Company should be subordinated to preferences declared in the contract, and the conclusion reached that the contract created no rights which were not subject to control by the State. The preferences sought to be created were, it was held, discriminatory as against other consumers and were disregarded. No sufficient reasons are here advanced for reviewing or altering the conclusions there carefully reached.

2. Articles of Incorporation Service Area.

The Articles of Kern Island Irrigating Canal Company, predecessor of Kern Island Canal Company, described the territory to be served.⁽⁸⁾ Claim is made that land within the described area is to be preferred in the service of water.

There was a sharp conflict in the evidence as to the location of the southerly and westerly boundaries of the area. Careful analysis of the evidence leads to the conclusion that complainants are correct in their location of these boundaries. Map "B" indicates approximately such locations as here found to

(8) The precise language of the provision in the Articles is as follows:

"The objects of the Company shall be to protect from overflow, and to supply with water for agricultural, domestic and manufacturing purposes the following described territory, situate in Kern County and bounded on the north by Kern River, east by the east boundary of Range 28 East, United States Surveys from Mount Diablo, south by Kern Lake and a line drawn east from the eastern extremity thereof, and west by that channel of Kern River commonly known as 'Old River.'"

have been.

This provision in the Articles apparently was never taken seriously. At an early date other canal companies began utility service within the area and in the nineties, indirectly through the East Side Canal Company, land was served with water from the Kern Island entitlement to the east of the easterly boundary⁽⁹⁾ and also deliveries were made directly to the south of the southerly boundary named,⁽¹⁰⁾ which service has continued to the present time, or for a period of over thirty years. Even were such extensions irregular at the time, it would be an abuse of discretion for this Commission now, even if it had the power, to order this utility to discontinue all service outside of the area described in the original Articles. Service by the East Side Canal Company outside the area was before the Commission in Hancock vs. East Side Canal Company, supra, more than ten years ago and service to that territory was approved. The complainants make no claim as against water from the Kern Island entitlement being served to lands under the East Side Canal and without the boundaries of the described area. The position thus taken points to the correctness of the conclusion here reached that the status of these lands and of lands in the Kern Lake bed taken under the Kern Island entitlement, both nearly thirty years ago, should not

(9) The circumstances of Kern Island water being applied to the East Side area were considered at great length in Hancock vs. East Side Canal Company, 16 C.R.C. 834; id 20 C.R.C. 205.

(10) The territory thus served to the south was in the old Kern Lake area and is referred to later in this Opinion. The extension was gradual. A substantial area was served about the same time the East Side Canal Company territory was taken in. The circumstances and history of this annexation are outlined in connection with the treatment of the New Rim Ditch annexation.

be disturbed.

3. Area Along South Rim of Kern Lake.

Prior to March 23, 1912, when this Commission was given certification jurisdiction over water corporations, some 17,000 acres of land in the Kern Lake bed had been placed under irrigation. The history of the various canals by which this extensive acreage was brought under canal is treated subsequently.

Starting about 1914, there was constructed what is termed the New Rim Ditch, the location of which is indicated on Maps "B" and "C". By 1917, this ditch reached the westerly line of Section 20 and Section 17 in Township 32 South, Range 27 East, M.D.B. & M.⁽¹¹⁾ This line is sometimes spoken of as Conner's Fill or San Emidio Road. This ditch paralleled the old Petersdorff Ditch but at a slightly higher elevation. It was constructed and is still owned by the Kern County Land Company.⁽¹²⁾ No certificate was secured for this construction or for the irrigation of the small acreage thus brought under the canal, nor does it appear that one was necessary.

But little land was irrigated by this ditch which was not already susceptible to irrigation from the Petersdorff Ditch. Counsel for complainants refer to the fact that several witnesses testified that "but only two little triangles of additional land"

(11) For convenience hereafter Townships and Ranges will be abbreviated as 32/27 for the foregoing, the first number representing the number of the Township South and, the second, the number of the Range East, M.D.B. & M.

(12) No point is made of the fact that this ditch was constructed by the Land Company rather than by the utility. Thus, in the brief of the Kern Island Company, it is frankly admitted "that such an extension of facilities, regardless of by whom it was actually constructed, is to be considered as an extension of its line, plant or system within the meaning of that section." The foregoing applies to Panhandle Extension thereof subsequently considered.

were brought under the canal by its construction. There was considerable evidence indicating that the new ditch was constructed for drainage purposes rather than irrigation. Indeed, this ditch assumes its main importance in connection with the Panhandle Extension.

And this leads to the so-called Panhandle Extension presenting the substantial issue here.

4. Panhandle Extension. (13)

From a very careful consideration of the record, it is concluded that the Panhandle lands should be eliminated from the service area of Kern Island Canal Company as representing an extension without a certificate of public convenience and necessity therefor having been secured.

(a) At this point a brief resume of the history of previous extensions and a statement of the circumstances of the Panhandle Extension are appropriate.

The present dry bed of Kern Lake formerly was a lake containing overflow flood waters from the Kern River and was connected with the adjacent Buena Vista Lake by a slough. Kern Lake was reclaimed as a result of the construction of the Buena Vista Levee, built in accordance with and immediately following the making of the Miller-Haggin Water Settlement Agreement of July, 1888, and also through the closing of the Old South Fork and Old

(13) The lands in the Panhandle area embrace a portion of Secs. 7 to 12, inclusive, in 32/26, and Sec. 18, in 32/27, lying north of the segregation line of swamp and overflow lands, which have long been and now are owned by Kern County Land Company, and the so-called Cornwell lands, being Secs. 2 to 6, inclusive, in 32/26, formerly belonging to George Cornwell but acquired by Kern County Land Company at an early date and still belonging to that Company. The Panhandle area is appropriately designated on Map "C". It comprises approximately 6,100 acres.

River channels as provided in and by the terms of the Swamp Land Contract. Apparently, the first farming operations in the Kern Lake area carried on by the Kern County Land Company were about or possibly a few years prior to 1893, irrigation being accomplished through the Petersdorff Ditch, diverting water in Section 7, in 32/28, and extending southerly and westerly along the south rim of Kern Lake to the west line of Section 21, in 32/27.

The second irrigation ditch constructed in the lake area was known as the Old Rim Ditch and was built prior to 1895, and possibly near or about 1893, by the Kern County Land Company as a unit in the extension of its irrigation facilities in the lake bed. This ditch headed in a slough near the north quarter of Section 18, in 32/28, and followed the contour around and along the northerly edge of Kern Lake for about two and one-half miles.

The Kern Island Extension, the next ditch built in the lake area, was constructed in 1896 by defendant's predecessor, the Kern Island Irrigating Canal Company. It started at the terminus of the main Kern Island canal in the west quarter corner of Section 6, in 32/28, and ran westerly approximately five miles to the west quarter corner of Section 5, in 32/27. The total acreage irrigated in the Kern Lake bed by the Old Rim Ditch, the Petersdorff Ditch and the Kern Island Extension is estimated to be approximately 17,000 acres. Kern Island Drain, a major connecting link in this distributing system, was constructed primarily as a drainage ditch in 1914 or 1915 and was completed not later than 1916. It now carries irrigation water from the main Kern Island canal to the New Rim Ditch.

The lands in the Kern Lake area thus brought under canal are indicated in Map "C".

By 1917, the predecessor of the present Kern Island Canal Company was irrigating land as far west as San Emidio Road. In that year or more probably in 1918, the New Rim Ditch was continued in a northwesterly and westerly direction to Buena Vista Levee. The extension was made by the Kern County Land Company. The lands in the Panhandle area irrigated from this extension then and now belonged to the Land Company.

(b) It is insisted by the Canal Company and the Land Company that the Land Company had been "voluntarily admitted to participate by the corporation in its supply of water" and hence by the provisions of Section 6 of the Water Companies Act (Chap. 80, Stats. 1913) is entitled in times of shortage to share ratably with other consumers in the supply. The trouble with this contention is that the circumstances attendant upon the Panhandle section being annexed were not such as to indicate a "voluntary" action by the utility. The word "voluntary" connotes a spontaneity and freedom of action entirely absent here. There was no action between independent parties or entities. In fact and in law, the situation is not different than had the Land Company been the direct and legal owner of the utility and had extended its water service to its own lands. Section 6 of the Water Companies Act is not reasonably susceptible to a construction that would place the landowner under such circumstances in the category of a voluntarily admitted consumer with its status beyond review. In any event, this section cannot be given an effect which would legalize an annexation of territory in violation of Section 50 of the Public Utilities Act of the State of California.

(c) It is urged by the Canal Company and by the Land Company that no certificate was necessary for the Panhandle Annexation or Extension.

Since March 23, 1912, Section 50 of the Public Utilities Act of the State of California has provided:

"No **** water corporation shall henceforth begin the construction of **** a line, plant, or system, or of any extension of such **** line, plant or system, without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require **** such corporation to secure such certificate for an extension within any city and county, or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county, or city or town, contiguous to its **** line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business."

That the Legislature esteemed the certification requirement of great importance is indicated by the necessity of a hearing as a mandatory prerequisite to Commission action. The purpose of requiring certification is not merely to protect an existing utility against an invasion of its territory but to protect consumers of the utility desiring to extend its system against improvident or prejudicial expansion.

As no certificate ever was secured by the Kern Island Company, it follows that the extension was unauthorized and unlawful unless (1) the extension was into territory contiguous to the system and (2) the territory annexed was not theretofore served by a utility of like character:

(1) By 1917, Kern Island water was being served as far west as San Emidio Road. The Panhandle runs west from this road to the Buena Vista Levee. Until 1920, the upper tier of sections

in the Panhandle area, being the so-called Cornwell lands, was served from an independent water right usually termed "Second Point" water.⁽¹⁴⁾ There is some evidence indicating Section 12, in 32/26, to have been in the same category. Assuming, however, it was not⁽¹⁵⁾ the extension in question consisted of a narrow strip of land over seven miles in length and at one point near the start of the extension only about one-quarter of a mile in width. (Later this strip was extended to embrace the tier of five sections on the north known as the Cornwell lands.) The shape of this extension and its relation to the area previously served is shown on Map "B" and also Map "C". Was the territory embraced in the extension "contiguous" within the meaning of the proviso in Section 50 of the Public Utilities Act of the State of California? A proviso is to be strictly construed. The importance of this rule is exemplified here for the construction urged would justify extensions by all manner of extreme and fantastic shoe-string strips and so largely nullify the salutary and basic requirements of the section. A careful reading of the context of the proviso makes clear its purpose was to relieve a utility of the necessity of applying for a certificate for extension (1) within a municipal corporation where operating, (2) into territory without a municipality contiguous to its system and not served by another utility, and (3) within territory already served in the ordinary

(14) Cornwell was a party to the Miller-Haggin Agreement of 1888 and his lands were entitled to water from a point below the intake for the various canals controlled by the Land Company.

(15) If it was, it will be observed from the map that this section cut the Panhandle area into two parts, separated one from another by a whole section of land served by an independent right.

course of its business. Construed and limited so as to conform to this purpose, the proviso is consistent with the basic inhibition of the section against unauthorized extensions. It should be so construed. It is concluded then that this extension was not justified as one into contiguous territory.

(2) Furthermore, the extension cannot be held to have been into territory not theretofore served by a utility of like character. There was adduced a large amount of testimony bearing on this issue. Some conflicts exist. There were clearly developed, however, certain outstanding facts largely decisive of the issue.

At an early date, Mr. Allen, an officer of the Land Company, laid out the lines and contours for the canal system by which the Panhandle (other than the Cornwell lands) was irrigated. Just when the canals were actually built is not clear, but they were completed in 1912. They are indicated on Map "C". The lateral canals serving the Cornwell lands were in as early as 1899.

Water was delivered into these lateral canals from the Buena Vista Canal, Stine Canal and, perhaps, the Farmers Canal, which canals were utility canals, being owned by the utilities of corresponding names here before the Commission, but the water delivered to the so-called Cornwell lands until about 1920 was so-called Second Point water.

Lands in the Panhandle were thus irrigated through other public utility canal systems until their irrigation was gradually shifted to the New Rim Ditch in 1918 and

succeeding years and water from the Kern Island entitlement used for their irrigation.

Until the Panhandle Extension of the New Rim Ditch, there was no physical connection between the lands in the Panhandle and the Kern Island system.

While it is claimed by the Kern Island Canal Company and Land Company that the water thus transmitted to the Panhandle (other than to the Cornwell lands) was Kern Island water and that these lands were always considered to have a Kern Island right, this claim and the testimony respecting the same is vague and not at all convincing.⁽¹⁶⁾ It is beyond question that the Panhandle lands (other than the Cornwell lands) were, from 1912 until physically connected with the Kern Island system about 1918 by the extension of the New Rim Ditch, receiving a public utility water service. Apparently, the claim of the Canal and Land Companies is that there was a dual service, the water delivered being attributable to the Kern Island Company while the system through which served was that of the Buena Vista, Stine or Farmers Canals. The evidence does not establish the existence of this anomalous status and, even if it did, it would not follow that the territory in 1918 was not "served by a utility of like char-

(16) In Hancock vs. East Side Canal Company, 20 C.R.C. 205, decided on June 30, 1921, on a record developed over a period of years prior to that date, it was held that "The Kern Island Irrigating Canal Company has been and is now diverting this water (Kern Island entitlement water) and has sold it to irrigators whose land can be supplied from their ditches, and has also delivered a part of this water supply to other companies for resale by them. Some of these other canal companies have the right to divert water from the Kern River, and water is sold to them by the Kern Island Irrigating Canal Company at such times as the quantity of water which these canal companies have the right to divert from Kern River is insufficient for the needs of their consumers. The record shows that this has occurred each year for a number of years."

acter" to the Kern Island Company.

The so-called Cornwell lands in the Panhandle by no stretch of the imagination may be said to have been contiguous territory if the other lands in the annexation were not. In other words, these lands would necessarily fall with the other lands.

(d) It is further insisted by the Canal and Land Companies that as of 1918, when the Panhandle Extension occurred, based upon crop conditions then existing, the utility was fully justified in extending its service area.⁽¹⁷⁾ At that time, cotton which has a rather heavy water duty and requires irrigation in July and August when the natural flow of the river is low, had not come in. Field crops using mostly winter irrigation predominated. On the other hand, the case of Hancock vs. East Side Canal Company, supra, heard about this time, gave indication of developing unrest in the Kern delta respecting the adequacy of the water supply for lands then under the canals of the various utilities.

The conclusions here reached respecting failure to apply for and secure a certificate for the Panhandle Extension renders it unnecessary to consider the interesting question here suggested. This Commission could not here grant a certificate nunc pro tunc, and it is quite immaterial now what the Commission might have done

(17) The following table gives the crop classification in the territory involved as of 1919 and 1930, together with the duty of water for the different crops:

	1919 Per Cent	1930 Per Cent	Duty Acre Feet
Alfalfa-----	24%	25%	3.00
Field Crops (Grain & Corn)-----	69%	35%	1.50
Orchard and Vineyard-----	1%	2%	1.50
Miscellaneous-----	6%	10%	2.00
Cotton-----	-	23%	2.25

had the utility applied for a certificate to make the Panhandle Extension. The fact is that the utility did not apply. If it applies in the future, the Commission will have to deal with conditions as it then finds them. If these are less favorable to the desires and interests of the Land Company, the fault is that of this Company and its subsidiary for failing to apply for the certificate which the law required.

5. "A", "B" and "C" Lands in Kern Island Area.

With the evidence developed in these cases, it is concluded that the "A", "B" and "C" lands heretofore referred to in connection with the service areas of the other utilities should likewise be excluded from the service area of the Kern Island Canal Company.

I recommend the following form of Order.

O R D E R

Public hearings having been had in the above entitled cases, based upon the findings in the Opinion,

IT IS HEREBY ORDERED:

1. That Kern Island Canal Company cease and desist from furnishing or delivering water to the so-called Panhandle area, as specifically described in the Opinion, unless and until a certificate of public convenience and necessity authorizing an extension to this area shall first be obtained.

2. That Kern Island Canal Company shall not in the future serve or deliver water to areas without the exterior boundaries of the territory served as delineated

on the map, Exhibit No. 1, filed herein (exclusive of the Panhandle area) or the lands within said area not designated on said map as a part of its service area, or those lands designated on said map as "A", "B" and "C", except as may be subsequently authorized by the Commission.

3. That the Buena Vista Canal, Inc., Central Canal Company, East Side Canal Company, The Farmers Canal Company, Kern River Canal and Irrigating Company, Pioneer Canal, Inc., and Stine Canal, Inc., shall not in the future serve or deliver water to areas without the exterior boundaries of territory served by them respectively as delineated on the map, Exhibit No. 1, filed herein, or to lands within the said respective areas not delineated on said map as a part of its service area, or to lands designated on said map as "A", "B" and "C", except as may be subsequently authorized by the Commission.

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This Order shall not be deemed to prevent the several utilities from selling water in amounts and at times not required by their consumers within their respective areas of service as herein fixed.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby approved and

ordered filed as the Opinion and Order of the Railroad Commission
of the State of California.

Dated at San Francisco, California, this 13th
day of November, 1933.

C. C. Seaver
Leon A. Williams
M. J. Cur
Walter H. Harris
Commissioners.

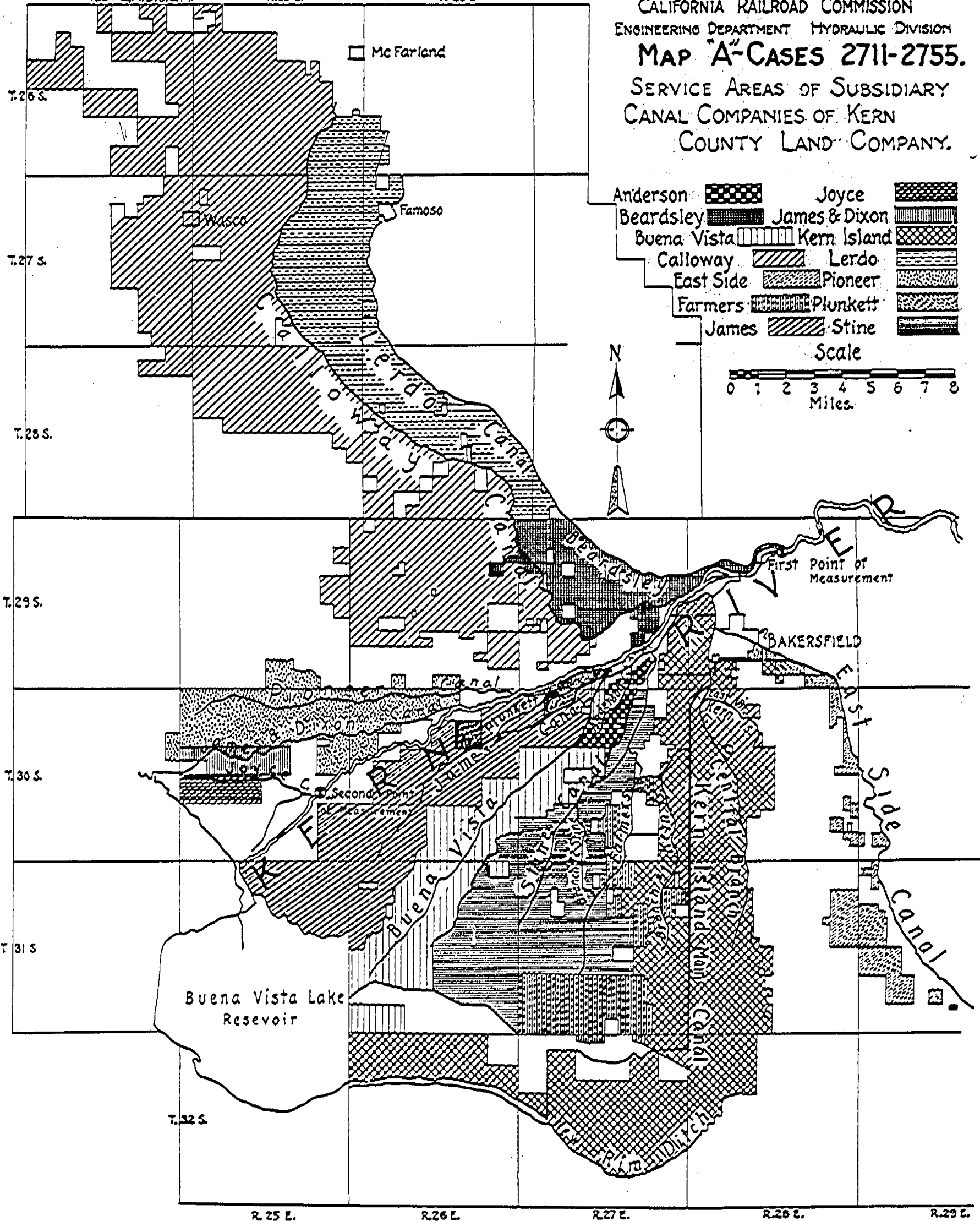
Commissioner Harris, having represented one of the
parties to this proceeding prior to becoming a member of the
Railroad Commission, feels himself disqualified and therefore
has not participated in this decision.

R.24 E.M.D.B.&M. R.25 E. R.26 E

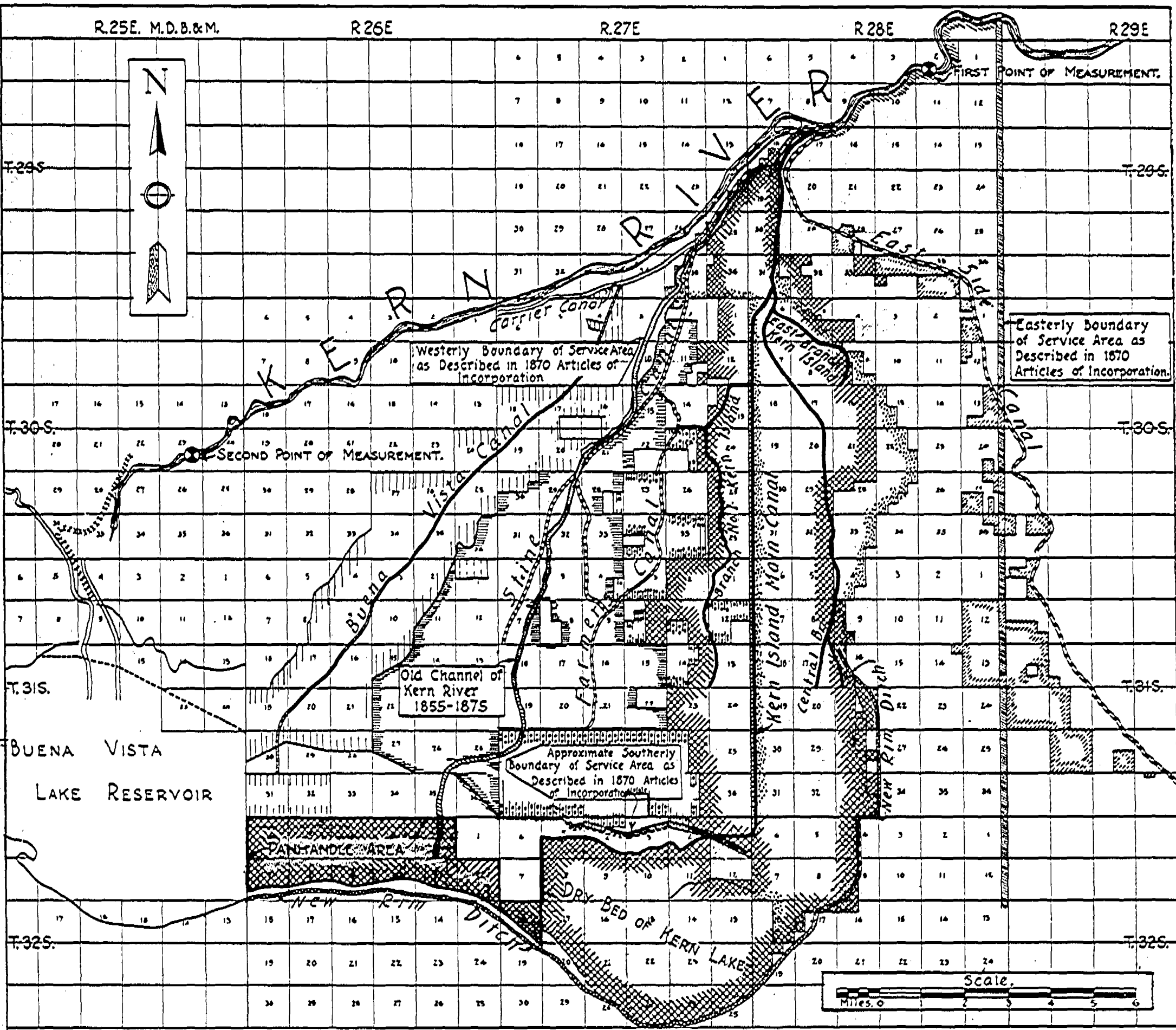
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT HYDRAULIC DIVISION
MAP "A"-CASES 2711-2755.
SERVICE AREAS OF SUBSIDIARY
CANAL COMPANIES OF KERN
COUNTY LAND COMPANY.

- | | | | |
|-------------|--|---------------|--|
| Anderson | | Joyce | |
| Beardsley | | James & Dixon | |
| Buena Vista | | Kern Island | |
| Calloway | | Lerdo | |
| East Side | | Pioneer | |
| Farmers | | Plunkett | |
| James | | Stine | |

Scale

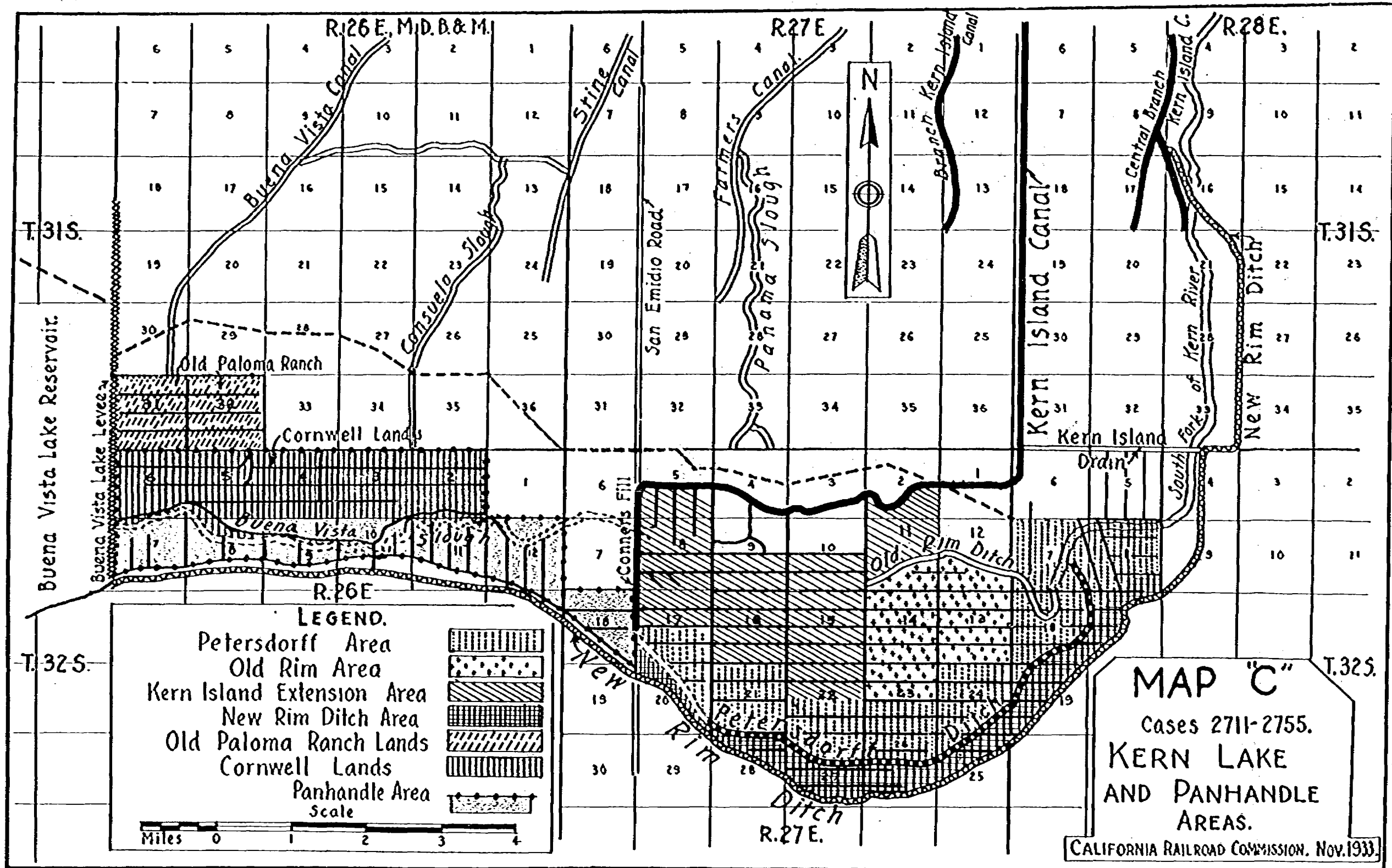


R.25 E. R.26 E. R.27 E. R.28 E. R.29 E.



MAP B - SHOWING GENERAL LOCATION OF LANDS AND CANALS INVOLVED IN CASE 2711.

- Service Area Described in 1870 Articles of Incorporation Boundaries of Swamp Land District No. 111
- Present Service Area of Kern Island Canal Co. Present Service Area Stine Canal Co.
- Present Service Area of Farmers Canal Co. Present Service Area Buena Vista Canal Co.
- Present Service Area East Side Canal Co. CALIFORNIA RAILROAD COMMISSION-NOV. 1933.



LEGEND.

Petersdorff Area	
Old Rim Area	
Kern Island Extension Area	
New Rim Ditch Area	
Old Paloma Ranch Lands	
Cornwell Lands	
Panhandle Area	

Scale

Miles 0 1 2 3 4

MAP "C"
 Cases 2711-2755.
**KERN LAKE
 AND PANHANDLE
 AREAS.**
 CALIFORNIA RAILROAD COMMISSION, NOV. 1933.